

A RESOLUTION APPROVING THE  
PURCHASE OF CERTAIN REAL ESTATE  
FOR ADDITIONAL PARKING FOR THE  
WATER POLLUTION CONTROL  
MAINTENANCE DEPARTMENT.

WHEREAS, Fort Wayne City Utilities is constructing  
a new Water Pollution Control Maintenance Building at 515 East  
Wallace Street; and

WHEREAS, additional parking is needed for the  
employees of the Water Pollution Control Maintenance  
Department; and

WHEREAS, the owner of the east one-half of Lot #208,  
Lewis Addition, commonly known as 426 East Wallace Street has  
agreed to sell this property to the City of Fort Wayne for  
Five Hundred Dollars (\$500.00);

WHEREAS, Sec. 11-2 of the Municipal Code of the City  
of Fort Wayne, Indiana, requires Common Council approval of  
any purchase of real estate by the City and its utilities.

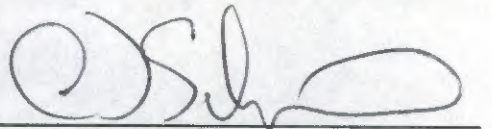
NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL  
OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. The purchase of the east one-half of Lot  
#208, Lewis Addition, commonly known as 426 East Wallace  
Street by the City of Fort Wayne Utilities, as described in  
the Agreement to Purchase Real Estate, attached hereto and  
made a part hereof, is hereby approved and agreed to. The  
appropriate officials of the City are hereby authorized to  
execute all documents necessary to accomplish said purchase.


SECTION 2. Prior Approval has been requested from  
Common Council on AUGUST 13, 1991. Two copies of said  
Agreement are on file with the Office of the City Clerk and  
made available for public inspection, according to law.



SECTION 3. That this Resolution shall be in full  
force and effect from and after its passage and any and all  
necessary approval by the Mayor.

  
Councilmember

APPROVED AS TO FORM  
AND LEGALITY

  
J. Timothy McCaulay, City Attorney

STAR BOND  
SOUTHWORTH CO. U.S.A.  
26% COTTON FIBER



TO: Theresa Walton, et al ("Seller"). Dated: 15 APRIL, 1991

The undersigned ("Buyer") offer(s) to purchase for \$ 500.00 (the "Purchase Price") in accordance with Subsection 1.0 the real estate, the address of which is 426 E. WALLACE STREET, FORT WAYNE, IN 46803

ALLEN County, Indiana, and the legal description of which is E 1/2 of LOT 208, LEWIS ADDITION. Such real estate, including

the improvements and fixtures described in Subsection 7.01, is called the "Real Estate". This offer is made subject to the following provisions:

Section 1. **MANNER OF PAYMENT OF PURCHASE PRICE.** [Mark appropriate box]

☒ 1.01. **Cash.** The Purchase Price shall be paid in cash.

☐ 1.02. **Cash with New Mortgage.** The Purchase Price shall be paid by Buyer's cash and funds from a new (conventional) (FHA) (VA) [strike two] first mortgage loan ("Loan") to be obtained by Buyer. The following provisions shall apply:

- (a) Within \_\_\_\_\_ days after this Agreement becomes effective, Buyer shall apply for the Loan, and then proceed promptly and in good faith to meet the lender's requirements for a commitment or other indication that the lender will make the Loan to Buyer ("Commitment").
- (b) Buyer shall have \_\_\_\_\_ days after this Agreement becomes effective within which to obtain a Commitment for a Loan having terms at least as favorable to Buyer as the following:
  - (1) principal amount of \_\_\_\_\_;
  - (2) (fixed) (adjustable) [strike one] interest rate of \_\_\_\_\_ %;
  - (3) amortization over \_\_\_\_\_ years; and
  - (4) discount points ("Points") charged by a lender in connection with the Loan which total not more than \_\_\_\_\_ % of the Loan or \$ \_\_\_\_\_, whichever is less.
- (c) Of the Points, Seller shall pay \_\_\_\_\_ Points or \$ \_\_\_\_\_, whichever is less. Buyer shall pay the remaining Points, except those which Seller is required to pay by law.
- (d) If Buyer satisfies the requirements stated in Subsection 1.02(a), but is unable to obtain within the number of days stated in Subsection 1.02(b), a Commitment having terms at least as favorable to Buyer as there stated, either party may terminate this Agreement. Upon termination, all earnest money shall be returned without delay.
- (e) If Buyer fails to satisfy the requirements stated in Subsection 1.02(a), then Seller may seek the remedies available under Subsections 19.01 and 19.02.
- (f) See Subsection 13.01 on the **reverse side** for additional provisions which apply here.

☐ 1.03. **Cash with Assumption of Existing Mortgage.** The Purchase Price shall be paid by Buyer in cash less the unpaid principal balance of an existing mortgage loan on the Real Estate. Buyer shall assume and agree to pay such mortgage loan and perform its terms. The following provisions shall apply:

- (a) Buyer has been informed that the holder of such mortgage loan is \_\_\_\_\_, and that the unpaid principal balance is approximately \$ \_\_\_\_\_ as of the date of this offer.
- (b) Seller (may) (may not) [strike one] require that the lender release Seller from liability for the existing mortgage loan as a condition of Buyer's assumption of it.
- (c) See Subsection 13.02 on the **reverse side** for additional provisions which apply here.

☐ 1.04. **Contract for Conditional Sale/Purchase Money Mortgage.** [Mark (a) or (b)]

- ☐ (a) **Contract for Conditional Sale.** The parties shall execute and deliver to each other, a Contract Sale of Real Estate ("Contract") in the form approved, as of the date of this offer, The Allen County Indiana Bar Association. The Contract shall contain the provisions described in Subsection 1.04(c). The Contract shall also provide that the Real Estate (may) (may not) [strike one] be leased or occupied by persons other than Buyer.
- ☐ (b) **Purchase Money Mortgage.** Buyer shall execute and deliver to Seller, a promissory note and purchase money mortgage ("Note and Mortgage"), in the forms approved, as of the date of this offer, by The Allen County Indiana Bar Association. The Note and Mortgage shall contain the provisions described in Subsection 1.04(c).
- (c) The Contract, or Note and Mortgage, shall provide for the following:
  - (1) A cash downpayment of \$ \_\_\_\_\_.
  - (2) Payment of the unpaid balance of the Purchase Price by monthly installments of principal and interest of not less than \$ \_\_\_\_\_, including an annual interest rate of \_\_\_\_\_ %, calculated monthly.
  - ☐ (3) A "balloon payment", by specifying the time the Purchase Price is to be paid in full, which is \_\_\_\_\_ [Mark box if this provision applies.]
  - ☐ (4) An appropriate escrow for Buyer's payment of taxes and insurance. [Mark box if this provision applies.]

Section 2. **TAXES, ASSESSMENTS AND ASSOCIATION DUES.**

2.01. [Mark (a) or (b)]

- ☒ (a) Buyer shall assume and pay real estate taxes payable in ~~XXXX~~ (November) [strike one], 19 91, and all subsequent taxes. At or before closing, Seller shall pay all real estate taxes payable before that date.
- ☐ (b) The real estate taxes shall be prorated. Seller shall pay real estate taxes which are payable during the year in which closing occurs, and taxes payable during the succeeding year, prorated to the date of closing. Buyer shall assume and pay all subsequent taxes.
- (c) If at the time of closing the tax rate is not determined, taxes payable by either party shall be computed at the rate and assessment in effect at the time of closing.

2.02. Seller shall pay any assessments or charges upon or applying to the Real Estate for public improvements or services which, on the date of closing, have been or are being constructed or installed on or about the Real Estate, or are serving the Real Estate. If such improvement has been or is being constructed, but an assessment for it has not yet been made, Seller shall pay an amount reasonably estimated by the applicable governmental agency to be equal to the anticipated assessment. SELLER WARRANTS he has not received notice of any planned improvement for which an assessment reasonably might be made within one (1) year after this Agreement, other than as is disclosed by Seller to Buyer in this Agreement.

2.03. "Association Dues" means dues or maintenance fees of a community association which, if unpaid, could become a lien upon the Real Estate. If Association Dues payable prior to closing are \$100.00 or less annually, Seller shall pay them. If such Association Dues are more than \$100.00 annually, the parties shall pay them pro rata, according to the date of closing. Buyer shall assume and pay all subsequent Association Dues.

2.04. Payment by Seller of his obligations under Section 2 shall either be made or provided for at closing.

Section 3. **FLOOD ZONE DESIGNATION OR AREA.** [Mark 3.01 or 3.02]

- ☐ 3.01. Buyer requires that the Real Estate not be located in an area which requires flood insurance, or which is subject to building or use limitations by reason of such location. If the Real Estate is so located, Buyer may terminate this Agreement, and all earnest money shall be returned without delay.
- ☒ 3.02. Buyer may not terminate this Agreement if the Real Estate is located in an area requiring flood insurance or subject to building or use limitations by reason of such location. Buyer agrees to pay all premiums charged for flood insurance from and after the date of closing.

Section 4. **EVIDENCE OF TITLE.**

4.01. Seller shall provide and pay for [mark (a) or (b)]:

- (a) An Abstract of Title disclosing in Seller marketable title to the Real Estate as of a date after the date this Agreement becomes effective.
- ☒ (b) An ALTA Owner's Policy, insuring in Buyer marketable title to the Real Estate as of a date after the date this Agreement becomes effective, in the full amount of the Purchase Price.

4.02. See Section 14 on the **reverse side** for additional provisions which apply here.

Section 5. **ZONING.**

5.01. Buyer's intended use of the Real Estate is AS ZONED

5.02. If at the time of closing such intended use is not permitted by the applicable zoning ordinance, Buyer may terminate this Agreement, and all earnest money shall be returned without delay.

Section 6. **POSSESSION, RENT, SECURITY DEPOSIT, INSURANCE AND UTILITIES.**

6.01. Seller shall deliver possession of the Real Estate to Buyer ~~XXXXXX~~ AT CLOSING

☐ 6.02. If Seller is allowed to be in possession of the Real Estate after closing under Subsection 6.01, the number stated before "days" shall be deemed to be the period of Seller's possession, even though he delivers possession before the end of that period. For being entitled to possession during that period, Seller shall pay to Buyer, as rent, an amount equal to the following: 1% of the Purchase Price; divided by 30; and multiplied by the number of days stated in Subsection 6.01. Such rent shall be withheld from Seller's proceeds and paid or credited to Buyer at closing. [Mark box if this provision applies.]

6.03. If Seller does not deliver possession as required by Subsection 6.01, Seller shall become a tenant at sufferance. Upon Buyer's demand (and in addition to any rent due under Subsection 6.02), Seller shall pay Buyer \$ \_\_\_\_\_ for each day Seller withholds possession. The amount so determined shall be deemed to be reasonable rent for the time Seller withholds possession.

6.04. Any rent due from a tenant of Seller on the Real Estate shall be prorated to the date of closing. At closing, Seller shall deliver to Buyer any security deposit then held for any such tenant. Insurance shall be cancelled as of the date of closing. Seller shall pay all charges for utility services furnished the Real



6.05. Buyer's remedies under Subsection 19.03 shall not be limited by the provisions in Subsection 6.03. Seller's obligations under Section 6 shall survive closing.

Section 7. IMPROVEMENTS AND FIXTURES.

7.01. The property being sold and purchased under this Agreement includes all improvements and permanent fixtures used in connection with it, including, but not limited to: electrical, gas, central heating, central air conditioning, and plumbing (including sewage disposal) systems, water softener(s), (except rental units), built-in appliances, screens, screen doors, storm windows, shades, venetian blinds, drapery hardware, awnings, shutters, attached floor covering, radio or television antennas (but excluding any satellite receiving station or dish, components and wiring), garage door openers with all activators, attached shelving, trees, shrubs, flowers, fences, and

- NONE -

now in or on such property. Except for a mortgage on the Real Estate being assumed under Subsection 1.03, such improvements and fixtures shall have their cost fully paid and shall be free of liens as of the time of closing.

Section 8. CONDITION OF REAL ESTATE.

8.01. Election by Buyer. This Agreement contains IMPORTANT PROVISIONS set forth in Section 16 on the reverse side. By initialling below, Buyer selects which of Subsections 16.01 or 16.02 is to apply. [Select ONLY ONE of the following; each person who is a Buyer must initial.]

(a) Buyer's Right to Inspection under Subsection 16.01. \_\_\_\_\_ [Initials of Buyer]

(b) WAIVER of Defects and RELEASE of Seller — "AS IS" Transaction under Subsection 16.02. \_\_\_\_\_ [Initials of Buyer]

8.02. Maintenance. See Subsection 16.03 on the reverse side for provisions which apply here.

8.03. Survival. The provisions of Section 16 agreed to by the parties shall survive closing.

Section 9. AGREEMENT.

9.01. Offer — Acceptance. By executing and delivering this instrument, Buyer is making an offer to Seller. This offer shall expire at 11:59 P.M. (local time), JULY 25 30, 19 91, unless Seller timely accepts it.

9.02. Manner of Acceptance. A party accepting an offer or a counteroffer shall do so in writing given to the other party or his agent at or before the time the offer or counteroffer expires.

9.03. Effectiveness of Agreement. Upon timely and proper acceptance of an offer or a counteroffer, an agreement between the parties will become effective, and the parties will then be bound. This Agreement shall continue in effect notwithstanding nonpayment by Buyer of additional earnest money due under Subsection 10.02 (if applicable).

9.04. Incorporation of Terms. The provisions in Sections 13 through 22 on the reverse side are incorporated by reference in, and are part of, this Agreement.

9.05. Acknowledgment of Receipt. By signing this Agreement, the parties acknowledge receipt of a copy of it.

Section 10. EARNEST MONEY.

10.01. At the time Buyer's offer is made and as part of it, Buyer has deposited the sum of \$ -0- as earnest money.

10.02. Within \_\_\_\_\_ days after this Agreement becomes effective, Buyer shall deposit the sum of \$ \_\_\_\_\_ as additional earnest money. If Buyer fails to do so, Seller may seek the remedies available under Subsections 19.01 and 19.02.

10.03. All earnest money deposited by Buyer under this Agreement shall be deposited with the broker ("Broker") of Seller's listing agent named below ("Listing Agent"). Money so deposited shall be held in escrow subject to this Agreement. If Listing Agent or Broker pays earnest money as provided in this Agreement, there shall be no liability for having so held or paid it, and the PARTIES RELEASE them from any such liability. At closing, Buyer shall receive credit toward the Purchase Price for earnest money deposited.

10.04. If this Agreement does not become effective, the holder of earnest money shall return it without delay. By accepting earnest money, each holder agrees to be subject to and bound by the provisions of this Agreement regarding return of earnest money and remedies for a breach under it, even though this Agreement has not become effective.

Section 11. CLOSING.

11.01. The closing date shall be on or before (SEE 17.01b), 19 91, subject to the provisions in Subsection 17.01.

11.02. See Section 17 on the reverse side for additional provisions which apply here.

Section 12. OTHER PROVISIONS: 17.03; 17.05; 17.06; SECTION 19; SECTION 22; SUBJECT TO APPROVAL OF FORT WAYNE CITY COUNCIL.

Buyer: CHARLES E. LAYTON, CHAIRMAN  
BOARD OF PUBLIC WORKS  
CITY OF FORT WAYNE  
(Signature)  
(Printed or Typed Name and Tax I.D. Number)

Buyer: \_\_\_\_\_  
(Signature)  
(Printed or Typed Name and Tax I.D. Number)

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

UNCONDITIONAL ACCEPTANCE BY SELLER

Seller accepts the offer made by Buyer as set forth above, without change or condition. Dated: 7-29, 19 91.

Seller: \_\_\_\_\_  
(Signature)  
(Printed or Typed Name and Tax I.D. Number)

X Seller: Theresa K. Walton  
Theresa K. WALTON  
(Signature)  
(Printed or Typed Name and Tax I.D. Number)

Address: 4708 S. Anthony St. Telephone: 219-745-2986  
456-6332

CONDITIONAL ACCEPTANCE BY SELLER [Counteroffer]

Seller accepts the offer made by Buyer, SUBJECT, HOWEVER, TO THE FOLLOWING PROVISIONS:

This counteroffer expires at 11:59 P.M. (local time), \_\_\_\_\_, 19 \_\_\_\_\_. Dated: \_\_\_\_\_, 19 \_\_\_\_\_.

Seller: \_\_\_\_\_  
(Signature)  
(Printed or Typed Name and Tax I.D. Number)

Seller: \_\_\_\_\_  
(Signature)  
(Printed or Typed Name and Tax I.D. Number)

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

BUYER'S ACCEPTANCE OF SELLER'S COUNTEROFFER

Buyer accepts and agrees to the provisions set forth above in Seller's counteroffer. Dated: \_\_\_\_\_, 19 \_\_\_\_\_.

Buyer: \_\_\_\_\_  
(Signature)

Buyer: \_\_\_\_\_  
(Signature)

AGENT INFORMATION

Listing Agent: \_\_\_\_\_ Company: \_\_\_\_\_ Tel. No. \_\_\_\_\_

Subagent: \_\_\_\_\_ Company: \_\_\_\_\_ Tel. No. \_\_\_\_\_

Subagent's M.L.S. Code No. \_\_\_\_\_

EARNEST MONEY

Received \$ \_\_\_\_\_ as earnest money on \_\_\_\_\_, 19 \_\_\_\_\_. Provisions of Section 10 apply. \_\_\_\_\_  
(Signature of Agent)

Received \$ \_\_\_\_\_ as additional earnest money on \_\_\_\_\_, 19 \_\_\_\_\_. \_\_\_\_\_  
(Signature of Agent)

WHEN PROPERLY EXECUTED, THIS AGREEMENT IS A LEGAL AND BINDING CONTRACT. LEGAL REVIEW MAY BE ADVISABLE.

SEE REVERSE SIDE FOR IMPORTANT PROVISIONS, PARTICULARLY SECTION 19 REGARDING REMEDIES.



## THE FOLLOWING PROVISIONS APPLY TO THIS AGREEMENT

### Section 13. ADDITIONAL PROVISIONS REGARDING PAYMENT OF PURCHASE PRICE.

#### 13.01. Payment of Purchase Price By Cash With New Mortgage.

- (a) If Buyer obtains a Commitment for a federally insured or guaranteed mortgage loan (for example: FHA or VA), and if the Purchase Price exceeds the amount of the Loan appraisal, Buyer may terminate this Agreement, and all earnest money shall be returned without delay.
- (b) If repairs are required in connection with a federally insured or guaranteed mortgage loan, Seller may elect to pay for such repairs, or terminate this Agreement and return all earnest money to Buyer without delay. However, this Agreement shall not terminate if Buyer assumes the cost of such repairs and so notifies Seller in writing within five (5) days after receipt of notice of Seller's election to terminate.
- (c) Upon written request from Seller or Listing Agent, Buyer shall inform the inquiring person of the progress of the Loan application. In addition, such person shall have the right to inquire of the lender concerning such progress, and Buyer authorizes the lender to disclose such progress and the terms being considered by the lender for a Loan. Further, Seller or Listing Agent may assist a lender in processing an application, but his action shall not prejudice or adversely affect the Loan application.
- (d) Upon written request from Seller or Listing Agent, Buyer shall give such person a copy or summary of the terms of Buyer's Loan application and a copy of the Commitment.
- (e) Buyer shall pay all Loan origination, inspection and underwriting fees, and all other closing expenses and costs imposed by the lender in giving Buyer Loan proceeds to purchase the Real Estate, except those which Seller is required to pay by law, and except the Points and closing fee Seller has agreed to pay under Subsections 1.02(c) and 17.07.
- (f) If Buyer having financing available upon terms at least as favorable as those stated in Subsection 1.02(b), fails to purchase the Real Estate, and Seller has not breached this Agreement, Seller may seek the remedies available under Subsections 19.01 and 19.02.

#### 13.02. Payment of Purchase Price By Cash With Assumption of Existing Mortgage.

- (a) Immediately after this Agreement becomes effective, Buyer shall apply to the lender for assumption of the existing mortgage, and proceed promptly and in good faith to meet the lender's requirements for assumption, subject to Subsection 13.02(b).
- (b) Buyer understands that assumption of the existing mortgage loan may be subject to consent of the lender. As a condition to giving consent, the lender may require an interest rate higher than the existing rate, or other concession. Buyer shall have fifteen (15) days from the date this Agreement becomes effective to obtain assumption terms satisfactory to Buyer from the lender, and to give Seller notice that such terms have been obtained. If Buyer fails to timely do so, either party may terminate this Agreement, and all earnest money shall be returned without delay.
- (c) If the existing mortgage neither allows the lender to vary its terms nor requires the lender's consent for assumption, Buyer's rights to obtain satisfactory assumption terms and to terminate this Agreement under Subsection 13.02(b) shall not apply.
- (d) Buyer shall pay any assumption or transfer fees charged by the lender, except any fee required for Seller to be released from liability for the existing mortgage loan, which fee Seller shall pay.
- (e) At closing, Seller shall assign to Buyer amounts held by the lender in escrow; and Buyer shall pay Seller a sum equal to such amounts, subject to any necessary adjustments for accrued expenses.

### Section 14. ADDITIONAL PROVISIONS REGARDING EVIDENCE OF TITLE.

14.01. Buyer shall have a reasonable time before closing to have the evidence of title examined. Seller shall have a reasonable time to correct any title defect.

14.02. Title to the Real Estate shall not be considered unmarketable by reason of any of the following matters, and Buyer shall accept title subject to them: (a) recorded building restrictions, restrictive covenants, conditions and other use restrictions ("Restrictions") applicable to the Real Estate; and (b) recorded or visible easements for public roads, utilities or public purposes ("Easements"), upon which existing improvements on the Real Estate do not encroach; PROVIDED, however, that at the time of closing: (1) there is no existing violation of the Restrictions; (2) there is no provision of reversion, re-entry, or forfeiture of title by reason of violation of the Restrictions; and (3) the Restrictions and Easements will not materially interfere with Buyer's intended use of the Real Estate as stated in Subsection 5.01, or as otherwise provided in this Agreement.

14.03. Issues of marketability shall be resolved by reference to the Standards of Marketability of The Allen County Indiana Bar Association in effect at the time marketability is determined.

14.04. Notwithstanding Seller's obligation under Subsection 4.01(b), if there is a simultaneous issuance of an ALTA Owner's policy and an ALTA Loan policy, all charges and premiums for them shall be paid equally by the parties.

14.05. If Seller is providing evidence of title under Subsection 4.01(b), Seller shall deliver to Buyer, without charge, any Abstract of Title in Seller's possession for the Real Estate.

### Section 15. SURVEY.

15.01. Seller shall provide and pay for a certificate of survey by an Indiana registered land surveyor, dated within ninety (90) days prior to closing. The surveyor shall identify the location of corners on the Real Estate and by drawing on the survey. The survey shall also show: (a) the dimensions and the location of all improvements on the Real Estate; (b) building lines and easements affecting the Real Estate; and (c) the flood zone designation of the Real Estate, or whether or not the Real Estate is located in a flood hazard area.

### Section 16. ADDITIONAL PROVISIONS REGARDING CONDITION OF REAL ESTATE.

#### 16.01. Buyer's Right to Inspection.

(a) Buyer may have the Real Estate inspected, and Seller agrees to make the Real Estate available for such inspection. All inspections and written reports of them (except those required by a lender in connection with a mortgage loan) shall be made within fifteen (15) days after the date this Agreement becomes effective.

(b) Inspections shall be at Buyer's expense by qualified, independent inspectors selected by Buyer. An inspector is considered "independent" if the inspector is unrelated to the parties, and will not realize direct or indirect financial benefit (other than receipt of a fee for services rendered) as a result of performing an inspection. The inspections may include, but are not limited to, the following systems and items: electrical, gas, central heating, central air conditioning, and plumbing (including sewage disposal and sump pumps) systems; well; built-in appliances; roof, walls; ceilings; floors; foundations; basement; crawl space; hazardous or toxic substances; and wood eating insect infestation. Buyer may also have inspections of a septic system and the quality of water in a well on the Real Estate to determine whether they satisfy standards imposed by the Board of Health of the county in which the Real Estate is located. Inspections required by a lender do not fulfill Buyer's right of inspection under Subsection 16.01.

(c) If an inspection report reveals a defect in the condition of a system or item described in Subsection 16.01(b), which could reasonably interfere with Buyer's intended use of the Real Estate, Buyer shall give Seller a copy of such report within five (5) days after receiving it. Prior to closing, Seller shall cure each such defect to Buyer's reasonable satisfaction. Subject to Subsection 16.01(d), if Seller is unable or unwilling to do so, either party may terminate this Agreement. However, Buyer may WAIVE Seller's obligation to cure and proceed to closing by giving Seller notice to that effect within fifteen (15) days after Seller gives Buyer notice of termination. Upon such waiver, this Agreement shall remain in effect, but without Seller's obligation to cure. Upon any termination, all earnest money shall be returned without delay.

(d) Neither of the parties shall have the right to terminate this Agreement if: (1) the cost of curing all defects contained in the inspection report does not exceed \$100.00 (which cost shall be paid by Seller); or (2) the defect as to which a right to terminate is claimed is one which Seller disclosed to Buyer in writing, at or before Buyer's execution of this offer.

(e) WAIVER: If Buyer fails to timely obtain the inspection and the report described in Subsection 16.01(a), or fails to timely give Seller the report described in Subsection 16.01(c), Buyer shall be deemed to have WAIVED his rights to have such inspection and report, or to have Seller cure any defect revealed in such report. In such event, neither Seller nor Buyer may terminate this Agreement.



## 16.02. WAIVER of Defects and RELEASE of Seller — "AS IS" Transaction.

- (a) Buyer acknowledges he has had the opportunity to require, as a condition of this Agreement, that the inspections described in Subsection 16.01 be made, and that Subsection 16.01 apply. BUYER HEREBY WAIVES THE RIGHT TO HAVE SUCH INSPECTIONS AND TO HAVE SUBSECTION 16.01 APPLY, and relies upon Buyer's own examination. BUYER FURTHER RELEASES SELLER FROM ANY AND ALL LIABILITY RELATING TO ANY DEFECT OR DEFICIENCY AFFECTING THE REAL ESTATE, and agrees to purchase the Real Estate "AS IS."
- (b) Inspections required by a lender in connection with a mortgage loan are not included in this waiver.

## 16.03. Maintenance.

- (a) Until Seller delivers possession of the Real Estate to Buyer, Seller shall maintain it in the same condition as existed:
- (1) [if Subsection 16.01 applies] at the later of the time: (A) of Buyer's last inspection made under Subsection 16.01(a); or (B) when all defects revealed by inspection reports properly obtained by Buyer are cured by Seller, if required by this Agreement.
  - (2) [if Subsection 16.02 applies] at the time of Buyer's last examination before this Agreement became effective.
- (b) Prior to closing, Buyer may inspect the Real Estate to determine whether Seller has complied with Subsection 16.03(a).
- (c) The failure by Seller to so maintain the Real Estate shall be considered a breach of this Agreement. However, Buyer shall have no claim against Seller for a failure to properly maintain the Real Estate if the reasonable cost of repairing or restoring it to the condition applicable under Subsection 16.01(a) is less than \$100.00, payment of which cost is Buyer's obligation. If such cost is \$100.00 or more, Seller shall pay the excess cost over Buyer's obligation.

## Section 17. ADDITIONAL PROVISIONS REGARDING CLOSING.

17.01. Closing shall be held on the later of: (a) the date stated in Subsection 11.01; or (b) the date all conditions imposed by this Agreement are satisfied [for example, title requirements are met, financing is available (if applicable), and surveying is completed]. The time and place of closing shall be agreed to by the parties in good faith. The closing agent or lender may, for its convenience or accommodation, extend the closing date for not more than seven (7) days, provided that the extension does not cause the Commitment to expire. Upon payment of the Purchase Price in accordance with Subsections 1.01, 1.02, 1.03 or 1.04(b) (whichever is applicable), Seller shall deliver a properly executed general warranty deed ("Deed") conveying the Real Estate to Buyer. If the Real Estate is being purchased under a Contract, or a Note and Mortgage, the applicable document(s) shall be executed and delivered at closing, as provided in Subsection 1.04.

17.02. Seller shall provide and pay for the Deed, or the Contract, any Note and Mortgage required under Subsection 1.04(b), and all other documents which are necessary for title to the Real Estate to meet legal requirements under this Agreement, and for the transaction to comply with applicable tax laws.

17.03. In each case of delivery of a Deed by Seller, whether at a closing or upon payment in full of a Contract, Seller shall also execute and deliver a Closing Affidavit and Representations ("Closing Affidavit") on the form of The Allen County Indiana Bar Association in effect at the time of delivery. If the Real Estate is being purchased under a Contract and Buyer requests a Closing Affidavit, Seller shall provide and pay for one at that time.

17.04. Upon Buyer's request, Seller shall also provide and pay for a certification of non-foreign status under the Foreign Investment in Real Estate Property Tax Act ("FIRPTA") of the Internal Revenue Code. If such certification is not so provided, Buyer may withhold from Seller's proceeds any tax due under FIRPTA.

17.05. If this transaction is not closed for failure of title to meet legal requirements, or for failure of Seller to convey by Deed as required, or to execute and deliver a Contract, or other document as required, in each case as of the time of closing, Buyer may terminate this Agreement, (all earnest money to be returned without delay), and also pursue appropriate remedies available under Subsection 19.03.

17.06. Seller shall bear risk of loss and damage to the Real Estate until the time of closing; and Buyer shall bear such risk after such time.

17.07. The fee charged by any closing agent (including an attorney acting as a closing agent for both parties, or Buyer's lender acting in such capacity) for closing services shall be paid equally by the parties, except Seller shall pay such fee if required by law. Any Professional Service Fee (commission) due to Broker under a listing agreement signed by Seller shall be withheld and paid by the closing agent from Seller's proceeds at closing.

## Section 18. AGENCY DISCLOSURE.

18.01. Buyer understands that the selling broker (including a listing broker selling his own listing and subagents) is exclusively the agent of Seller and not of Buyer. However, all brokers and agents are obligated to accurately represent pertinent facts, and fairly treat all parties to this Agreement.

## Section 19. REMEDIES OF PARTIES.

19.01. If this Agreement becomes effective and Buyer, having no right or option to terminate this Agreement, fails to complete the purchase as provided in this Agreement, Buyer shall pay to Seller, as liquidated damages, an amount equal to the greater of five percent (5%) of the Purchase Price, or the earnest money deposited by Buyer ("Damages"). Other than the remedies available under Subsection 19.02, Seller shall then have no other remedy against Buyer at law or in equity. Earnest money deposited shall be credited against the Damages.

19.02. If Buyer breaches any of his obligations in this Agreement, Seller shall be entitled to recover, in addition to any remedies available under this Agreement, all reasonable costs and expenses, including attorney fees, incurred by Seller in enforcing Buyer's obligations.

19.03. If Seller breaches any of his obligations in this Agreement, Buyer shall be entitled to recover, in addition to any remedies available (including specific performance), all reasonable costs and expenses, including attorney fees, incurred by Buyer in enforcing Seller's obligations.

19.04. The obligations of a party breaching this Agreement, and the rights of the other party to the remedies provided, shall survive this Agreement.

## Section 20. RELEASE OF SELLER'S AGENTS.

20.01. Except for a material misrepresentation made by Listing Agent or any broker, subagent or other agent of Seller, the PARTIES RELEASE each such person from liability for any defect or deficiency now existing or later discovered relating to the Real Estate, and all systems, appliances or equipment on it. These provisions shall survive closing.

## Section 21. MANNER OF TERMINATING THIS AGREEMENT AND NOTICE.

21.01. If either party wishes to terminate this Agreement pursuant to an option to do so granted by this Agreement, a party shall give the other party notice of termination, stating with reasonable detail the basis for termination. The termination shall become effective on the fifteenth (15th) day after the date notice is given, unless on or before that day: (a) the defect or default stated in the notice shall have been cured; (b) the party having the option to terminate gives notice to the other of either a WAIVER of the condition or contingency upon which such option is based, or an EXTENSION of the time within which such condition or contingency is to be performed or satisfied; or (c) Buyer shall have given Seller notice that Buyer will pay the Purchase Price without regard to the manner of payment stated in Subsections 1.02 and 13.01, or Subsections 1.03 and 13.02.

21.02. Any notice provided under this Agreement shall be in writing, and given to the other party at his address stated in this Agreement. Notice shall be deemed given when: (a) personal service of it is made on the party to be notified; or (b) it is mailed to the party to be notified by means of certified or registered U.S. mail, return receipt requested, postage prepaid.

## Section 22. MISCELLANEOUS.

22.01. This Agreement shall bind, and inure to the benefit of, the parties and their heirs, personal and legal representatives, successors and assigns, and shall be interpreted under the laws of the State of Indiana.

22.02. Time is of the essence of this Agreement.

22.03. Headings are for reference only, and do not affect the provisions of this Agreement. Where appropriate, the masculine gender shall include the feminine or the neuter, and the singular shall include the plural.

22.04. This Agreement contains all of the agreements of the parties, all prior negotiations, understandings and agreements having been merged into it. Amendments of this Agreement shall not be effective unless made in writing and signed by the parties.

22.05. In computing a time period prescribed in this Agreement, the day of the act or event shall not be counted. All subsequent days, including intervening weekend days and holidays, shall be counted in the period.



Read the first time in full and on motion by Delmick  
seconded by Edwards, and duly adopted, read the second time  
title and referred to the Committee on Amendments to the City Plan (and the  
City Plan Commission for recommendation) and Public Hearing to be held aft  
due legal notice, at the Council Conference Room 128, City-County Building  
Fort Wayne, Indiana, on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_\_ M., E.S.

DATED: 8-12-91

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Gidd  
seconded by \_\_\_\_\_, and duly adopted, placed on its  
passage. PASSED by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>7</u>		<u>1</u>	<u>1</u>
BRADBURY	<u>✓</u>			
BURNS	<u>✓</u>			
EDMONDS	<u>✓</u>			
GIAQUINTA	<u>✓</u>			
HENRY				
LONG	<u>✓</u>			<u>✓</u>
REDD			<u>✓</u>	
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 8-27-91

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)  
(SPECIAL) (ZONING MAP) ORDINANCE RESOLUTION NO. 09-46-91  
on the 27th day of August, 1991,

Sandra E. Kennedy ATTEST  
SANDRA E. KENNEDY, CITY CLERK

SEAL  
Samuel J. Talarico  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the 28th day of August, 1991  
at the hour of 2:00 o'clock P. M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 4th day of September  
1991, at the hour of 9:00 o'clock A. M., E.S.T.

Paul Helmke  
PAUL HELMKE, MAYOR



DIGEST SHEET

TITLE OF ORDINANCE RESOLUTION

DEPARTMENT REQUESTING ORDINANCE WATER RESOURCES

SYNOPSIS OF ORDINANCE APPROVES PURCHASE OF ONE-HALF OF LOT #208,  
LEWIS ADDITION. PROPERTY WILL BE USED FOR CONSTRUCTION OF A  
PARKING LOT IN CONJUNCTION WITH THE CONSTRUCTION OF THE NEW WATER  
POLLUTION CONTROL MAINTENANCE BUILDING.

09-91-0819

EFFECT OF PASSAGE PROPERTY MAY BE PURCHASED.

EFFECT OF NON-PASSAGE PROPERTY CANNOT BE PURCHASED.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) \_\_\_\_\_

ASSIGNED TO COMMITTEE (PRESIDENT) \_\_\_\_\_



BILL NO. R-91-08-19

REPORT OF THE COMMITTEE ON FINANCE

MARK E. GIAQUINTA, CHAIRMAN  
DONALD J. SCHMIDT, VICE CHAIRMAN  
BRADBURY, REDD, BURNS

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS  
REFERRED AN (~~ORDINANCE~~) (RESOLUTION) APPROVING THE PURCHASE  
OF CERTAIN REAL ESTATE FOR ADDITIONAL PARKING FOR THE  
WATER POLLUTION CONTROL MAINTENANCE DEPARTMENT

HAVE HAD SAID (~~ORDINANCE~~) (RESOLUTION) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(~~ORDINANCE~~) (RESOLUTION) \_\_\_\_\_

DO PASS

DO NOT PASS

ABSTAIN

NO REC

*Mark E. Giaquinta*

*CR Edwards*

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

*Bradbury*

\_\_\_\_\_

\_\_\_\_\_

DATED:

*8-27-91.*

Sandra E. Kennedy  
City Clerk